

*REMARKS*

Claims 1-5, 10-14, 19, 21, 22 and 25-32 have been canceled as being drawn to a non-elected invention without prejudice to filing a divisional application.

Claim 6 has been amended to more accurately claim the invention. Specifically, claim 6 has been amended to specify that the process comprises providing a nucleic acid which encodes a fusion protein to a plant cell or plant. Support for this language can be found, for example, in Examples 5 and 6. The fusion protein comprises the protein of SEQ ID NO:4 linked to the desired protein. Claim 6 has further been amended to specify that the desired protein is heterologous to the protein of SEQ ID NO:4 as suggested by the Examiner.

Claim 8 has been amended to correct the typographical error noted by the Examiner, to change "bases" to "nucleotides" and to be consistent with amended claim 6.

Claim 9 has been amended to insert the language "CaMV" as suggested by the Examiner and to be consistent with amended claim 6. Support for CaMV 35S promoter can be found at page 11, last line.

Claim 15 has been amended to delete the "capable" language and to insert language concerning a promoter as suggested by the Examiner. Support for the inserted language can be found in Figure 6 and on page 2, lines 8-9 and 14-15. Claim 15 has also been amended to refer to "the" protein of SEQ ID NO:4. Claim 15 has further been amended to specify that the protein of interest is heterologous to the protein of SEQ ID NO:4 as suggested by the Examiner.

Claim 17 has been amended to insert the language "CaMV" as suggested by the Examiner. Support for CaMV 35S promoter can be found at page 11, last line.

Claim 18 has been amended to change "bases" to "nucleotides."

New claims 32 and 33 have been added. Claim 32 is dependent on claim 6 and directed to the plant cell or plant being transfected with the nucleic acid. Support for this claim can be found in Example 5. Claim 33 is dependent on claim 6 and directed to the plant cell or plant being transformed with the nucleic acid. Support for this claim can be found in Example 6.

Application Serial No. 09/857,841  
Amendment dated 13 February 2006  
Reply to Office Action of 13 September 2005

New claims 34 and 35 have been added. These claims are similar to original claim 15 except that they depend from claims 16 and 17, respectively.

The Examiner noted that the application did not contain an abstract. Accordingly, an abstract on separate sheet is provided herewith.

Applicants submit that these amendments do not constitute new matter, and their entry is requested.

Applicants note that new claims 32-35 read on the elected invention.

The Examiner rejected claims 9, 15-17 and 20 under 35 U.S.C. § 112, second paragraph for being indefinite. It is submitted that the amendments to the claims as suggested by the Examiner obviate this rejection. Withdrawal of this rejection is requested.

The Examiner rejected claims 6, 7, 15, 16 and 20 under 35 U.S.C. § 102(b) as being anticipated by Hamamoto et al. (US 5,618,699) in view of the interpretation of the phrase "a protein of SEQ ID NO:4." In accordance with the Examiner's suggestion, the claims have been amended such that this phrase reads "the protein of SEQ ID NO:4." It is submitted that this amendment obviates this rejection, and its withdrawal is requested.

The Examiner rejected claims 6-9, 15-18 and 20 under 35 U.S.C. § 102(b) as being anticipated by WO 96/21018 (Asgrow Seed Company) in view of the interpretation that the remainder of the viral coat protein could be a desired protein. In accordance with the Examiner's suggestion, the claims have been amended to specify that the desired protein or the protein of interest is heterologous to the protein of SEQ ID NO:4. It is submitted that this amendment obviates this rejection, and its withdrawal is requested.

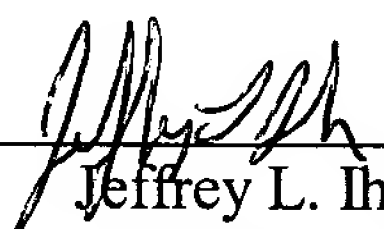
The Examiner rejected claims 6-9, 15-18 and 20 under 35 U.S.C. § 102(e) as being anticipated by Boeshore et al. (US 6,127,601) in view of the interpretation that the remainder of the viral coat protein could be a desired protein. In accordance with the Examiner's suggestion, the claims have been amended to specify that the desired protein or the protein of interest is heterologous to the protein of SEQ ID NO:4. It is submitted that this amendment obviates this rejection, and its withdrawal is requested.

The Examiner rejected claims 6-9, 15-18 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Hamamoto in view of each of Boeshore and Asgrow Seed Company. In accordance with the Examiner's suggestion, the claims have been amended to specify that the desired protein or the protein of interest is heterologous to the protein of SEQ ID NO:4. The cited prior art does not disclose or suggest the nucleic acid encoding a fusion protein comprising the protein of SEQ ID NO:4 linked to a heterologous protein. The cited prior art does not disclose or suggest the unexpectedly high levels of protein expression achieved with this nucleic acid which has been demonstrated in the present application at page 8, bottom paragraph, pages 9-10, page 11, lines 2-7 and page 12. It is submitted that this amendment obviates this rejection, and its withdrawal is requested.

In view of the above amendments and remarks, it is submitted that the present are meet the requirements of the patent statutes and are patentable over the cited prior art. Reconsideration of this application and early notice of allowance is requested. The Examiner is invited to telephone the undersigned if he believes that it will advance the prosecution of the present application.

Respectfully submitted,

ROTHWELL, FIGG, ERNST & MANBECK, p.c.

By  \_\_\_\_\_  
Jeffrey L. Ihnen  
Registration No. 28,957  
Attorney for Applicant  
1425 K Street, N.W., Suite 800  
Washington, D.C. 20005  
phone: 202-783-6040  
fax: 202-783-6031

**ATTACHMENT: ABSTRACT**